

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRI. APPLICATION (BA) NO. 427 OF 2017

(CHANDRAKUMAR @ PINTU SURESH JAISWAL....VS.. STATE OF MAH.THR.P.S.O., KANHAN,
NAGPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D.V.Chauhan, Advocate for Applicant.
Shri Neeraj Patil, A.P.P. for Non-applicant.
Shri J.M.Gandhi & Shri.C.R.Thakur, Advs. for Complainant.

CORAM : Z.A.HAQ, J.

DATED : JULY 20, 2017.

CRI.APPLN.(APPP) NO.1039/2017.

Considering the facts of the case, the complainant-Gopal Muneshwar Singh/father of the deceased is permitted to assist the prosecution.

The criminal application is **allowed**.

CRI.APPLN.(BA) NO.427/2017.

Heard.

The applicant is arrested on 24th October, 2014 in connection with Crime No.139 of 2014, registered against 7 accused (including the applicant) for the offences punishable under Sections 143, 147, 148, 149, 302 of the Indian Penal Code. The applicant had filed Criminal Application (BA) No. 250 of 2016 which came to be disposed on 2nd May, 2016 by following order:

“CRI.APPLN.(BA) NO.250/16.

*Shri A.A. Naik, learned advocate
for the applicants, on instructions, seeks
permission to withdraw the application with*

liberty to move again if the trial does not commence within six months.

The application is disposed of as withdrawn with liberty as prayed for.”

Now, this application is moved as the trial has not commenced.

The learned advocate for the applicant has placed on record Roznama of Sessions Trial No. 494 of 2015 which shows that the trial is not being delayed because of the applicant.

The application is opposed on the ground that out of 7 accused two accused are absconding, only 1 accused-Tarun Jain whose name was not reflected in the first information report is granted bail and other 4 accused continue to be in jail and Criminal Application No. 103 of 2016 filed by co-accused-Sharad was withdrawn after this Court expressed that the application has to be dismissed.

The learned Additional Public Prosecutor and the learned advocate for the complainant have submitted that the crime committed by the accused (including the applicant) is grave and the involvement of the applicant in commission of the crime is clearly reflected by the statements of at least three witnesses. It is submitted that considering these facts, the application may be rejected. To support the submission, reliance is placed on the following judgments:

- i) Judgment given in the case of *Younus Bin Omer Yafai Vs. State of A.P.*, reported in **(2013) 1 SCC 365**;

- ii) Judgment given in the case of *Kanwar Singh Meena Vs. State of Rajasthan*, reported in **AIR 2013 SC 296**;
- iii) Judgment given in the case of *Satish Jaggi Vs. State of Chhattisgarh*, reported in **2007 CRI. L.J. 2766**.

The learned advocate for the applicant has pointed out that the statement of victim Sunny is recorded after almost two months of the incident and therefore, *prima-facie* it does not support the case of prosecution. It is further submitted that no other witness has given any statement attributing overtact of such nature to the applicant that even after period of about 33 months in jail, the prayer of the applicant for directions to the non-applicant to release him on bail is required to be rejected.

It is submitted that earlier no crime had been registered against the applicant and in this case also he is falsely implicated.

Charge-sheet is filed on 19th March, 2015. The non-applicant has not been able to point out that further custody of the applicant is required for investigation. To dispel the apprehension of the non-applicant that if the applicant is released on bail he may again indulge in similar crime or may pressurize the witnesses, the applicant has shown willingness to stay away from Kanhan city and it is submitted that he will reside in Chandrapur district.

Considering the facts of the case, following order is passed:

The applicant, having been arrested in connection with Crime No. 139 of 2014 registered by the non-applicant, he be released on bail on executing P.R. Bond for Rs.One Lakh and furnishing two solvent sureties in the like amount, on the following conditions:

- i) The applicant shall not enter Kanhan city District: Nagpur till conclusion of the trial except with prior permission of the Sessions Court.
- ii) Till conclusion of the trial, the applicant shall stay in Chandrapur district.
- iii) The applicant shall be released only after he provides address where he will be residing and the same is verified by the Investigating Officer.
- iv) The applicant shall provide his cellphone number and cellphone numbers of the persons who will stand surety for him.
- v) The applicant shall attend trial before Sessions Court regularly on every date unless granted exemption by the Sessions Court.
- vi) If the applicant fails to attend the trial before the Sessions Court on any date without being exempted by the Sessions Court, this order shall stand recalled and the bail granted to the applicant shall stand cancelled.

The application is **allowed** in the above terms.

Attention of the learned trial Judge is invited to the directions given by the Hon'ble Supreme Court in the judgment given in the case of *Hussain Vs. Union of India*, reported in **AIR 2017 1362**.

JUDGE

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